

Memorandum of Agreement  
among  
the United States Army Corps of Engineers, New York District,  
the New York State Historic Preservation Office,  
the Advisory Council on Historic Preservation  
and  
the Athens Generating Company, L.P.  
regarding  
the Athens Generating Facility,  
Athens, Greene County, New York

WHEREAS, pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act (33 U.S.C. 403), the Athens Generating Company, L.P. (Athens Generating) has applied for a permit from the United States Army Corps of Engineers, New York District (Corps), Permit Application Number 1997-16040-YM, to authorize activities in support of the construction of a natural gas-fired electric generating facility and related gas, water, and electrical interconnects (together, the Facility or the Project) in Greene County, New York; and

WHEREAS, the Corps has consulted with the New York State Office of Parks, Recreation, and Historic Preservation, which serves as the State Historic Preservation Office (SHPO), and the Advisory Council on Historic Preservation (Council) in accordance with Section 106 of the National Historic Preservation Act (16 U.S.C. 470f), and its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800), and the Corps' regulation, 33 CFR Part 325, Appendix C; and

WHEREAS, the Corps and the SHPO concur that the Area of Potential Effect (APE) for visual impacts to historic properties is defined as the area within a five mile radius from the center of the Facility site; and

WHEREAS, the Corps, in consultation with the SHPO, has determined that the Facility in Athens, Greene County, New York, as described in the Corps Public Notice dated August 4, 1999 (Application No. 1997-16040-YM) and modified to include dry cooling technology as described in the drawings dated August 22 and 28, and September 1, 2000, will have an adverse effect on historic properties; and

WHEREAS, Athens Generating has agreed to fund a \$2.5 million "Catskill/Olana Viewshed Mitigation Trust" to be used to carry out projects that preserve and enhance the scenic beauty of the Hudson River Valley in, near or affecting the Catskill-Olana Scenic Area of Statewide Significance so as to mitigate and off-set the Facility's visual impacts; and

WHEREAS, Athens Generating will donate in excess of 100 acres of land to two conservation groups, the New York State Conservation Council and the Greene County Soil and Water Conservation District, including land along the Hudson River just north of the site of the Project's Pump House; and

WHEREAS, the Corps issued public notices for the Project on August 4, 1999 and September 27, 1999; held a public hearing on the Project's permit application on November 3, 1999; and has received written comments and oral testimony as part of its public interest review and historic preservation process; and

WHEREAS, the Project received a Certificate of Environmental Compatibility and Public Need from the New York State Board on ~~Electric~~ Generation Siting and the Environment (Siting Board) on June 15, 2000; and

WHEREAS, the Corps, in a letter dated January 26, 2001, invited the Council to participate in consultation to resolve adverse effects pursuant to 36 CFR 800.6(a)(1); and

WHEREAS, the Corps, in a letter dated February 16, 2001, invited the National Park Service (NPS) to participate in consultation to resolve adverse effects pursuant to 36 CFR 800.10(c); and

WHEREAS, Athens Generating has also participated in the consultation and has agreed to be a signatory to this Agreement; and

WHEREAS, the Corps received written requests from organizations and individuals with an interest in the historic preservation process to participate in the Section 106 review process, and the Corps acknowledged all written requests by inviting the Athens Architectural Workshop, the National Trust for Historic Preservation, Scenic Hudson, Citizens for the Hudson Valley, the Preservation League of New York State, the Village of Athens, the Olana Partnership, the Friends of Hudson, Stand Together Oppose Power Plant (STOPP), Hudson River Heritage, Property Owners of the Athens Lower Village Historic District, Property Owners of Brick Row, the Stockbridge-Munsee Band of Mohican Indians, Ian Nitschke, Mark Teague, Walter Pogliani, Jacqueline Dunn, Jay Carlisle and Janessa Nisley, Roger Downs, Andrea Smallwood, and Nicholas Nicholson to become consulting parties; and

WHEREAS, the Corps has invited all consulting parties to concur in this Agreement;

NOW, THEREFORE, the Corps, the Council, the SHPO, and Athens Generating enter into this Agreement pursuant to 36 CFR 800.6(b)(2), with the understanding that the undertaking covered by this Agreement shall be implemented in accordance with the following conditions in order to avoid, mitigate and minimize the effect of the undertaking on historic properties as is required by 36 CFR 800.6(a) and with the understanding that the execution and implementation of this Agreement satisfies the Corps' responsibilities under Section 106.

## STIPULATIONS

Athens Generating shall construct and operate the Facility in compliance with the following conditions, which shall be included as special conditions of a Corps permit, if a permit is issued.

### I. Design and Construction

#### A Cooling and Exhaust Technology

1. In accordance with the Certificate of Environmental Compatibility and Public Need issued by the Siting Board dated June 15, 2000, Athens Generating shall install and use stack heaters or other alternate mitigation technology (such as the use of heat recovery steam generators to raise stack temperatures) designed for daily operation from between one-half hour before sunrise and one-half hour after sunset at such time as a visible exhaust stack plume might occur, if distillate oil is burned in any unit.

Within 180 days of the effective date of a Corps permit, if issued, Athens Generating shall submit to the Corps and the SHPO a plan for monitoring and reporting any visible plumes that may occur from the exhaust stacks. The plan shall include a schedule for reporting, visual assessments of seasonal plume visibility, criteria for establishing adverse visual impacts, and appropriate options for mitigation of impacts.

- 3 Athens Generating shall design, construct and operate the Facility using dry cooling technology. Combustion exhaust stacks will be constructed no taller than 180 feet above their concrete foundation (i.e., a maximum stack height of 359 feet above mean sea level).

#### B. Facility Design

##### Exterior Treatment

The Facility shall be constructed using low-glare, neutral colored building materials. The Facility shall be "terra brown" and the color of the roofs of the buildings shall be "hunter green". These colors refer to the Butler color chart found in Exhibit 281 of the Evidentiary Hearing that considered the Athens Generating Siting Board Application. An architectural drawing and detail plan shall be submitted to the SHPO and the Corps for review and approval with respect to building material and colors, prior to the commencement of construction of the buildings.

##### 2. Electrical Interconnects

Non-specular conductors shall be required for all electrical interconnects and Corten steel pole structures shall be used for all electrical interconnects.

### 3. Pump House

The Pump House for the Project shall be constructed using typical residential finish materials or other materials as approved by the Corps and the SHPO. The completed Pump House shall be landscaped with materials consistent with local surroundings. A plan showing architectural and landscaping details for the Pump House shall be developed in consultation with the SHPO and approved by the SHPO and the Corps prior to the construction of the Pump House. The completed Pump House shall be landscaped with materials consistent with the local surroundings.

### 4. Water and Utility Lines

Plans for the water pipeline route shall include visual impact mitigation measures addressing:

- a. routing changes north of County Route 74 and east of New York State Route 385; and
- b. the minimization of the clearing width affected by the routing changes noted above.
- c. Construction plans shall indicate measures for minimizing the clearing of vegetation necessary to accommodate the water pipeline at the crest of the hill, 500 feet west of the Pump House.

### 5. Lighting

- a. The final Site Plan for the Project shall provide details to include measures to prevent off-site glare by using full-cutoff fixtures on all exterior area lights; provide for task-lighting of component areas as feasible; and demonstrate that design illumination conforms to applicable worker safety requirements for work area lighting while minimizing off-site lighting impacts.
- b. The United States Federal Aviation Administration (FAA) does not require aviation warning lights for the current design and no such lighting will be installed. If the FAA subsequently requires the use of aviation warning lights, Athens Generating shall coordinate compliance of this requirement with the SHPO and the Corps.

## 6. Noise

Athens Generating shall design the Facility to meet the following acoustic design goals:

<u>Direction of Receptor from Source</u>	<u>Location</u>	<u>Acoustic Design Goal</u>
North	Schoharie Turnpike	41 dBA
East(1)	Flats Extension Road	40 dBA
East(2)	Flats Road	40 dBA
South	Leeds-Athens Road	46 dBA
West	Route 9W	46 dBA
West	Residence 290' from Pump House	35 dBA

Athens Generating shall submit to the Corps and the SHPO a post construction report by an acoustical engineer to demonstrate that the Project complies with the acoustic design goals set forth above within six months of commencing operation of the Facility.

## C. Review

Athens Generating shall provide each plan referenced above in Stipulation I to the SHPO, the Corps and each concurring party. Each concurring party shall provide any comments in writing to the SHPO and the Corps within seven (7) days of receipt of each plan. The SHPO shall review each plan and provide its determination in writing to the Corps within fifteen (15) days of receipt of each plan. The Corps shall review each plan and provide its determination in writing to Athens Generating within 21 days of receipt of each plan.

## II. Archaeological Resources

- A. Athens Generating, in consultation with the Corps and the SHPO, shall develop a Cultural Resource Management Plan that will outline the measures to protect identified National Register-eligible archaeological sites during the construction and operation of the Facility, including pipelines and transmission lines. No ground disturbance shall commence prior to receipt of written approval of this plan from the Corps and the SHPO.
- B. The boundaries of the archaeological sites identified by Athens Generating as JMA-4, JMA-7, JMA-16, CA: P-3 and CA: P-8 and the significant portions of the archaeological sites identified as JMA-1, JMA-2, JMA-6, JMA-10, JMA-11 shall be delineated on the Project plans as "Environmentally Sensitive Areas" and clearly marked as avoidance areas during the construction and operation of the Facility. Temporary fencing shall be installed to protect these areas during construction.

- C. Siltation fencing shall be installed and maintained, in effective operating order, between archaeological sites and upgradient work areas during Facility construction, to reduce the risk of site disturbance that could be caused by surface runoff, erosion and sedimentation.
- D. An Unanticipated Discovery Plan shall be prepared to provide protection in the event that cultural resources are encountered during construction. The Plan shall include the retention of a qualified archaeologist throughout the period of ground disturbance associated with construction in the event that cultural resources are encountered or adjacent archaeological sites are affected by Facility activities. The Plan will also include procedures to evaluate unanticipated discoveries, to develop appropriate treatment plans for identified resources and to coordinate Corps and SHPO reviews and approvals. The Plan will be submitted to the Corps and the SHPO for review and approval prior to the start of ground disturbance.

### III. Facility Landscaping

A Tree Protection Plan shall be developed by a certified professional arborist for the Facility, the Pump House, and all access roads. The Tree Protection Plan shall be included in the appropriate design and construction plans and shall include provisions for tree protection, including boring, root pruning, soil compaction prevention, and restoration measures appropriate for ensuring the health and vigor of the trees important for visual mitigation at key locations.

- A. Athens Generating shall preserve existing on-site trees to the extent practicable during the construction of the Facility to provide a buffer area. To the extent practicable, an effective wooded buffer shall be maintained along all sides of the Facility and the access road during plant operations. Protected trees and buffers shall be tagged and/or fenced prior to the start of the construction of the access road.
- B. Tree clearing for water pipeline construction within 50 feet of New York Route 385 shall be limited to a maximum width of 25 feet to limit visual impacts. The area shall be delineated and staked prior to construction.
- C. Tree clearing for the water pipeline construction from the Leeds-Athens Road to the Niagara Mohawk Power Corporation access road shall be limited to a maximum width of 50 feet.
- D. Tree clearing for water pipeline construction from the Pump House to the crest of the hill west of the Pump House shall be limited to a maximum width of 50 feet.
- E. Prior to commencement of final landscaping of the Facility entrance, an entrance landscaping/sign plan shall be prepared.

- F Athens Generating shall provide copies of each plan referenced in Stipulation III to the SHPO, the Corps and each concurring party. Each concurring party shall provide any comments in writing to the SHPO and the Corps within seven (7) days of receipt of each plan. The SHPO shall review each plan and provide its determination in writing to the Corps within fifteen (15) days of receipt of each plan. The Corps shall review each plan and provide its determination in writing to Athens Generating within 21 days of receipt of each plan.

#### IV. Historic Resources

- A Within 90 days of the effective date of a Corps permit, if issued, Athens Generating, in consultation with the SHPO, shall develop a Regional and Community Historic Preservation Benefit Plan for the enhancement of historic properties. The Plan shall set aside \$750,000 for the Olana State Historic Site, \$250,000 for the Thomas Cole House, and a \$1,000,000 fund for current and prospective public-access historic sites in Greene and Columbia Counties, including established historic districts within the Town of Athens. Priority shall be made for properties within the Project's APE. The plan shall include the following provisions:
- 1 Within 90 days of the Plan's approval, a lump sum of \$2,000,000 shall be deposited in a Natural Heritage Trust (NHT) account.<sup>1</sup>
  - 2 Of the \$2,000,000, \$750,000 shall be set aside for restoration projects on the historic buildings or landscape at the Olana State Historic Site and \$250,000 shall be set aside for the Thomas Cole House. The remaining funds, totaling \$1,000,000 plus accrued interest, shall be awarded in the form of grants within five years of the commencement of the operations of the Facility. All grants shall be disbursed as 50/50 matching grants. Grantees' contributions may include in-kind services. Projects funded through the grant program must be within Greene or Columbia Counties, with preference given to projects within the APE. Two categories of properties are eligible for such grants: (1) eligible or registered historic sites that are owned/operated by the state or federal government, municipalities, or not-for-profit organizations and open to the public on a regular basis or will be open pending the completion of the funded project, are eligible for restoration grants or grants for interpretation or heritage tourism programs; and (2) local governments with jurisdiction over established Historic Districts in the Town of Athens, are eligible for grants for historic preservation façade programs, Main Street initiatives, waterfront revitalization efforts, or revolving loan funds or other economic incentive programs for the owners of historic properties.

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<sup>1</sup> The NHT is a corporation created to administer the receipt and distribution of private gifts, devises, and bequests donated to further conservation, outdoor recreation and historic preservation purposes. The NHT can receive 5% of the interest accumulated as an administrative fee and 95% of the interest will be distributed along with the principal for any grant it administers under this Agreement.

- 3 A seven member Board of Trustees composed of the Commissioner of the New York State Office of Parks, Recreation and Historic Preservation, the Chairman of the New York State Board for Historic Preservation, the Chairman of the Hudson Valley Greenway Conservancy, an officer of the Greene County Historical Society, an officer of the Columbia County Historical Society, the Executive Director of the Hudson Valley Greenway Communities Council, and a representative from Athens Generating shall determine grant awards.
- B Within 90 days of the effective date of a Corps permit, if issued, Athens Generating shall submit a Landscape Planting and Restoration Plan to the Corps, the Council, and the SHPO for review and approval. The plan shall include funding for plantings at historic properties within the APE as necessary to mitigate adverse visual impacts due to construction and operation of the Project. The Plan shall include a fund not to exceed \$275,000.00 to be provided by Athens Generating for off-site planting to screen views of the Facility from National Register-eligible or listed properties that are not publicly-owned. The Plan shall establish an application process for accessing this fund, provide a method for the fund's disbursement, set forth measures to ensure the expenditures are made in accordance with this Agreement, and identify a limit for administrative expenses. The Plan shall include recommendations for appropriate planting and maintenance specifications and indicate the use of quality stock of native species and cultivars appropriate to the site. The application process shall be implemented according to the following stipulations:
- Before the Facility begins operation, Athens Generating shall update the existing historic buildings survey to identify historic properties within the APE not included on the original survey and to provide additional information on historic properties and other unevaluated historic properties in the survey. Athens Generating shall provide the updated survey to the SHPO, who will review the updated survey and compile a list of National Register eligible or listed properties based upon the updated survey. The historic properties list will be provided to the Corps and Athens Generating. This historic properties list will serve as a baseline for evaluating applications for the Landscape Planting and Restoration Plan. Applications for properties not on the list will be evaluated by SHPO for their National Register-eligibility on a case-by-case basis.
  - 2 Before the Facility begins operation, Athens Generating shall publish a public notice in at least two local or regional newspapers, including the *Daily Mail* and the *Register Star*, announcing the availability of the funds and soliciting applications. Athens Generating shall provide a copy of the notice to the Corps, the SHPO and the concurring parties.
  - 3 The public notice shall present the historic properties list, define the purpose of the fund, and state the geographic area covered by the fund, the information



required to apply, an Athens Generating contact name, address, and phone number for the applicants, a description of evaluation criteria, and an application deadline of no sooner than three months from the date of the public notice. Athens Generating shall be responsible for receiving, tracking and documenting all applications throughout the process.

4. The applications shall be evaluated and rated by the SHPO and an independent landscape architect retained by Athens Generating. The qualifications of the landscape architect shall meet the National Park Service standards defined in 36 CFR Part 61. The landscape architect shall be paid out of the fund. The landscape architect shall provide specifications for appropriate plantings and a budget estimate. The SHPO and landscape architect shall make site visits to the properties of applicants, as necessary, in order to evaluate the applications.
  5. The SHPO and landscape architect shall have nine months from the application deadline to evaluate and rate the applications. The evaluation criteria shall include:
    - a. the significance of the property;
    - b. the integrity of the property's setting;
    - c. the nature and severity of the visual impacts of the Project to the principal views from property; and
    - d. the likelihood that the landscaping would succeed in its intended purpose.
  6. Athens Generating shall disburse funds in accordance with the plan within three months of the completion of the SHPO's review of the applications. Athens Generating shall provide documentation of the disbursement of funds, including a list of properties and funded budgets, to the Corps, Council and SHPO. Athens Generating shall retain records of the program with the Landscaping Planting and Restoration Plan, for so long as this Agreement continues in effect.
- C. Within 90 days of the effective date of a Corps permit, if issued, Athens Generating shall provide a \$250,000 grant to the NHT for the benefit of the Village of Athens. This grant is to be used for historic preservation façade programs, Main Street initiatives, waterfront revitalization efforts, revolving loan funds, or other economic incentive programs for the owners of historic properties, as approved by the Board of Trustees, identified in Stipulation IV.A.3. This grant is in addition to the fund identified in Stipulation IV.A above.
- D. Athens Generating shall provide the plan referenced in Stipulation IV.A to the SHPO, the Corps and each concurring party. Each concurring party shall provide

any comments in writing to the SHPO and the Corps within seven (7) days of the receipt of the plan. The SHPO shall review the plan and provide its determination in writing to the Corps within fifteen (15) days of receipt of the plan. The Corps shall review the plan and provide its determination in writing to Athens Generating within 21 days of receipt of the plan.

- E. Athens Generating shall provide the plan referenced in Stipulation IV.B to the SHPO, the Council, the Corps and each concurring party. Each concurring party shall provide any comments in writing to the SHPO and the Corps within seven (7) days of receipt of the plan. The SHPO and the Council shall each review the plan and provide its determination in writing to the Corps within fifteen (15) days of receipt of the plan. The Corps shall review the plan and provide its determination in writing to Athens Generating within 21 days of receipt of the plan.

#### V. Decommissioning

- A. Before commencing any construction activities subject to the Corps' permit, if issued, other than research, surveying, boring or other related activities necessary to prepare final design plans or obtain permitting, Athens Generating shall provide to the SHPO and the Corps, the Siting Board's approval of the financial security arrangement found adequate to ensure the restoration of any disturbed areas in the event the Facility is not completed.
- B. Upon the commencement of commercial operation of the Facility, the security shall include funds to cover the cost of decommissioning, dismantling, closing or reusing the plant when the Facility has reached the end of its service life, as proposed by Athens Generating.
- C. These requirements are not intended to require that duplicative financial security be provided under Athens Generating's State and federal permits. Security provided under any State approvals, which meets the criteria stated in this stipulation, shall be deemed to satisfy these requirements.

#### VI. Reporting

- A. Athens Generating shall submit status reports on or before June 30 and December 31 of each year to the Corps, the SHPO, each concurring party, and the Council to summarize the measures it has taken to comply with the terms of this MOA. Reports shall be submitted so long as this Agreement remains in effect.
- B. For a period of five years from the effective date of a Corps permit, if issued, Athens Generating shall mail a semi-annual newsletter to all parties to this Agreement and all consulting parties, describing issues and activities undertaken by Athens Generating in furtherance of this Agreement. At a minimum, the newsletter shall describe the progress of Project construction, any archeological

discoveries made during construction, significant changes to Project design, if any, significant activity scheduled prior to the release of the subsequent newsletter, and, to the extent possible, activities carried out with funds provided pursuant to this Agreement. Athens Generating may consult with SHPO regarding the content of the newsletter where appropriate.

VII. Dispute Resolution

- A. The Corps, the SHPO, the Council and Athens Generating (the signatories) shall notify all other signatories in writing of any instance where a signatory to this agreement objects to the implementation of any of the stipulations set forth above. The Corps, the SHPO and Athens Generating shall consult to resolve the objection. If the Corps determines that the objection cannot be resolved, the Corps shall forward all documentation relevant to the dispute to the Council. Within 10 business days after receipt of such documentation, the Council shall either a) provide written recommendations relative to the dispute, or b) notify the Corps that it will comment in accordance with 36 C.F.R. Part 800.7(c). Any comment provided in response to such a request shall be taken into account by the Corps in accordance with 36 CFR Part 800 with reference to subject of the dispute.
- B. Any recommendations or comments provided by the Council shall be understood to pertain to the subject of the dispute. Athens Generating's responsibility to carry out all actions under this Agreement that are not the subject of the dispute shall remain unchanged.


VIII Term of the Memorandum of Agreement

This Agreement shall remain in force from the date of its execution until five years following the commencement of any construction authorized by a Corps permit, if issued, unless the Corps, the SHPO and the Council agree otherwise.

IX. Amendments to the Memorandum of Agreement

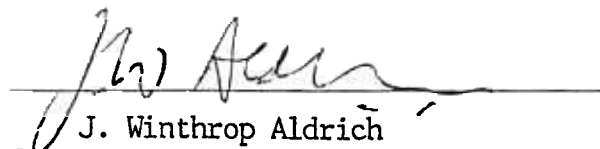
This Memorandum of Agreement may be amended only upon agreement of the Corps, the SHPO, the Council and Athens Generating (the signatories). Any signatory may request an amendment and must provide no less than 30 calendar days written notification of its request to the other signatories. In such a case, the signatories to the Agreement shall consult to consider such amendments in a manner consistent with 36 CFR Part 800.

U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT

  
Colonel, Corps of Engineers  
District Engineers

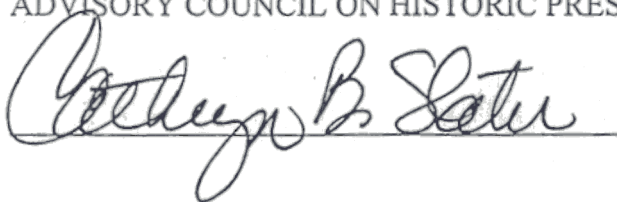
  
Date

NEW YORK STATE HISTORIC PRESERVATION OFFICE

  
J. Winthrop Aldrich  
Deputy Commissioner for Historic Pres.

11 May '01  
Date

ADVISORY COUNCIL ON HISTORIC PRESERVATION



May 16, 2001  
Date

ATHENS GENERATING COMPANY, LP



WILLIAM F. QUINN  
VICE PRESIDENT

5-10-01  
Date

I CONCUR WITH THE MEMORANDUM OF AGREEMENT AMONG THE U.S.  
ARMY CORPS OF ENGINEERS, THE NEW YORK STATE HISTORIC  
PRESERVATION OFFICE, THE ADVISORY COUNCIL ON HISTORIC  
PRESERVATION AND ATHENS GENERATING COMPANY EXECUTED ON MAY  
16, 2001, REGARDING TREATMENT OF CULTURAL AND HISTORIC  
RESOURCES IN THE VICINITY OF THE ATHENS GENERATING PROJECT:

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Date